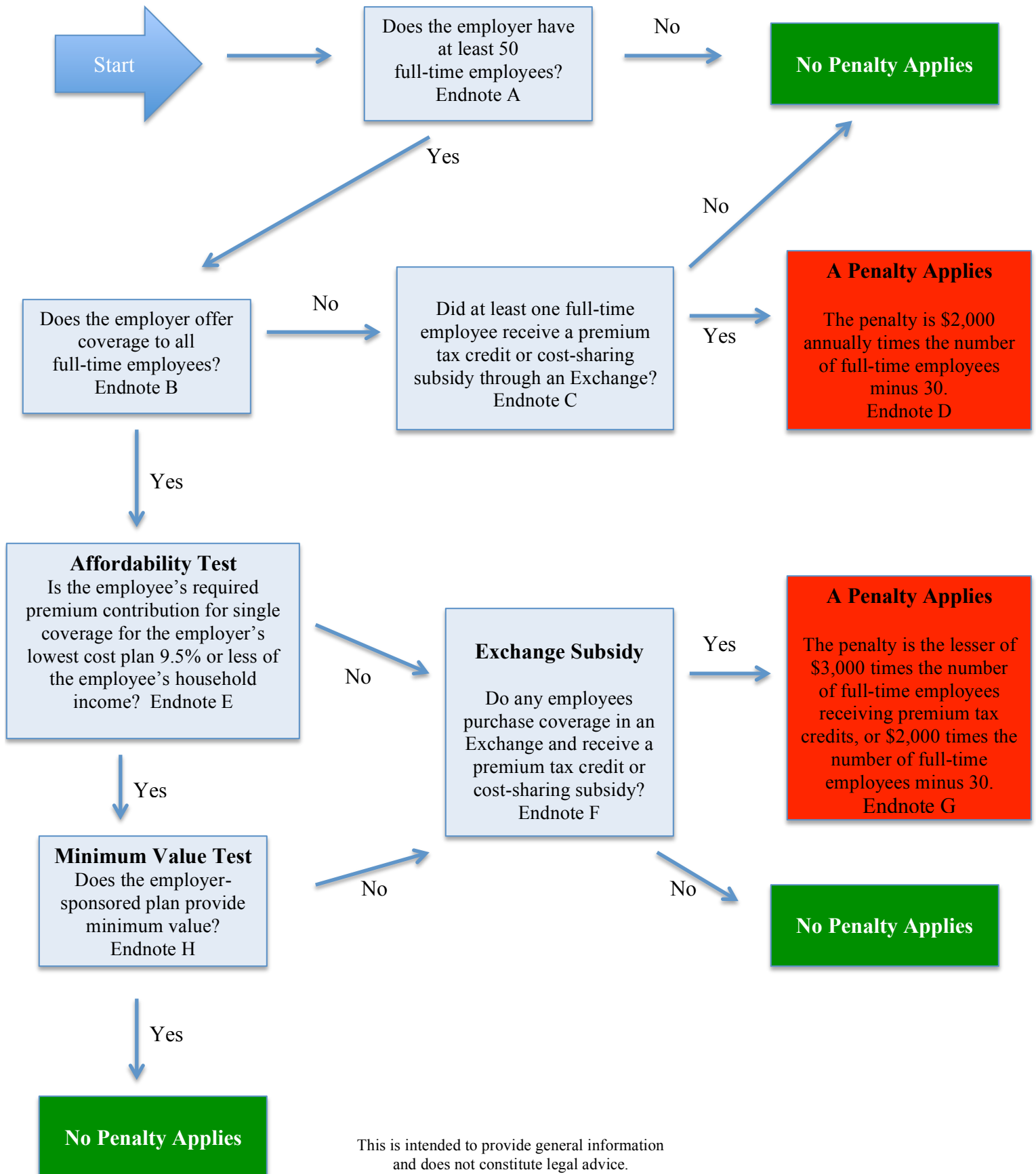


PPACA Play or Pay Penalties Beginning in 2014



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Endnotes for the PPACA Play or Pay Penalty Flowchart

Endnote A – Employers count full-time employees (or full-time equivalents) on business days during the preceding calendar year. According to IRS Notice 2011-36, the “Patient Protection and Affordable Care Act” (called ACA by the agencies) treats an employee who has an average of at least 30 hours of service per week as a full-time employee. IRS contemplates that proposed regulations would provide that 130 hours of service in a calendar month would be treated as the monthly equivalent of at least 30 hours of service per week.

An employee's hours of service would include each hour for which an employee is paid, or entitled to payment by the employer on account of a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. IRS further contemplates that no more than 160 hours of service would be counted for an employee on account of any single continuous period during which the employee was paid or entitled to payment but performed no duties. See IRS Notice 2012-58 for more.

Endnote B – The current interpretation of the statutory language requires the offering of single-only coverage to avoid the penalty. However, there are discussions that the interpretation could change to include the offering of dependent coverage to avoid the penalty. A penalty could be triggered if even one full-time employee in a controlled group is not offered health coverage. IRS contemplates in IRS Notice 2011-36 that the proposed regulations to be released at some future date on the employer shared responsibility provisions will make clear that an employer offering coverage to “all, or substantially all” of its full-time employees will not be subject to the §4980H(a) provision. The definition of “substantially all” will be important, especially for employers who have plans that are in compliance with IRC section 105(h), but do not offer coverage to all full-time employees.

Endnote C - Two types of subsidies are required to become available in 2014: health premium tax credits and cost-sharing reductions. These subsidies are available to individuals with household income starting at 100% of the federal poverty level up to 400% of the federal poverty level. 400% of the federal poverty level in 2014 for a family of four is estimated to be approximately \$91,000. Household income includes the income of the taxpayer and all individuals for whom the taxpayer can claim a personal exemption.

Health premium tax credits operate on a sliding scale. The tax credit begins at 2% of household income for taxpayers at 100% of the federal poverty level and phases out at 9.5% of household income for those above 400% of the federal poverty level. For example, an individual at 100% of the federal poverty level would be expected to pay 2% of their household income for coverage; the premium tax credit would equal the balance of the cost of coverage for a “benchmark plan” (defined as the second-lowest-cost plan in the Exchange). No one would receive a credit that is larger than the amount they actually pay for their plan.

Cost-sharing reductions lower the annual out-of-pocket expenditures for deductibles, coinsurance, copayments and similar charges. Cost-sharing reductions do not include premiums, balance billing amounts for non-network providers or spending for non-covered services. They phase out after household income exceeds 400% of the federal poverty level.

Endnote D – This is the §4980H(a) penalty; it is calculated on a monthly basis. No level of employer contribution is required to avoid this penalty. Employers are not subject to this penalty for failing to offer coverage to an employee for the initial three calendar months of employment.

Endnote E - IRS' current interpretation of the affordability test (for purposes of calculating an employer penalty) is based on the required contribution for single coverage. This could change. An employee's W-2 wages may be used to determine affordability through 2014 (IRS Notice 2012-58).

Endnote F: In a proposed regulation, the IRS stated that family members would **not** be eligible for the advance premium tax credits when affordable coverage was available to the employee but not to the family. The final IRS regulations on the premium tax credits (released in June 2012) have placeholders for addressing the issue of affordability for family members. The issue remains under discussion. The cost estimates of the premium tax credits to the American taxpayers were based on the assumption that only employees would be eligible for the premium credits when unaffordable coverage was offered.

Endnote G: This is the §4980H(b) penalty; it is calculated on a monthly basis.

Endnote H: Under the minimum value rule, an employer must pay at least 60% of the cost of a basket of health care expenses. The agencies are in the process of deciding what health care expenses will be in the basket. The IRS released a request for comments (Notice 2012-31) on several possible approaches to determining whether health coverage under an employer-sponsored plan provides “minimum value.” These approaches include an actuarial value calculator, safe harbors in the form of checklists, or certification by an actuary. Most employer-sponsored plans, excluding mini-med, are expected to meet the minimum value requirements, according to a report released by HHS.